

## **CHAPTER 3: PROPERTY REQUIREMENTS**

### **3.1 INTRODUCTION**

Multi-family housing projects are subject to a number of property requirements. These requirements serve to establish standards for the quality of the housing provided under the program. The Agency's goal is to develop — at a reasonable cost to the Agency and the taxpayer — decent, safe, and sanitary housing for program-eligible residents in eligible rural areas.

This chapter describes the requirements that govern the designation of places where the Agency will focus its loan activity and that establish the standards by which the projects will be developed. Section 1 describes designated places and how they are established. Section 2 describes site requirements including the site location, site standards, site density, and civil rights. Section 3 describes environmental requirements, and Section 4 describes design requirements including design standards, residential design, economical development costs, and accessibility.

### **SECTION 1: DESIGNATED PLACES [7 CFR 3560.57]**

### **3.2 OVERVIEW**

In establishing the Agency's multi-family programs, lawmakers included a provision for targeting assistance to the geographic areas that most need it. To meet this requirement, the Agency identifies certain areas as "designated places." These are rural areas where development of a rental project will further the program's goals.

Every year, the State Office must submit a list of designated places to the National Office. Only project proposals located in the areas on this list are eligible to compete for funding under the NOFA. The following paragraphs explain how to establish and maintain this list.

### **3.3 ESTABLISHING A DESIGNATED PLACE LIST**

The National Office will send the State Office a list of places ranked according to their need for multi-family housing. The National Office will take the following criteria into consideration when developing this list: the area must qualify as a rural area, it must have a demonstrated lack of mortgage credit, and the area must have a demonstrated need for multi-family housing based on the incidence of poverty, the existence of substandard housing, and the lack of affordable housing. (See 7 CFR 3560.57 for more information on these factors.)

#### **A. Requirements for Establishing Designated Places**

The State will select designated places from the ranked list provided to them by the National Office. In making the selection, the following requirements must be met:

- The designated places must be chosen in rank order.

- The list may not include places with fewer than 250 households unless the state has requested and been granted by the Administrator a statewide exception. For Indian reservations, at least 250 households must be located within the boundaries of the reservation to be eligible for the list.
- The list may include up to 10 percent, but at least 10 of the state's total eligible rural places (i.e., in states with fewer than 100 eligible rural places, the list of designated places must include 10 places). The National Office may authorize states to select up to 20 percent of eligible rural places if funding levels warrant.
- The state has some discretion to add additional places to create geographic diversity on the list if an established geographic region or district is not represented on the list. Each place chosen for geographic diversity must be the top-ranked place in its region or district.
- The state may add places of high need to this list (above the 10 percent or 10 places). High need areas are defined as:
  - ◇ Empowerment Zones (EZ), Enterprise Communities (EC), and Rural Economic and Area Partnership (REAP) communities;
  - ◇ Places identified in the state Consolidated Plan or similar state plan or needs assessment report that have received concurrence from the National Office;
  - ◇ Indian reservations or communities located within the boundaries of tribal allotted or trust land; or
  - ◇ Places that have a special need, as identified by the State Director. These places require National Office concurrence.
- Places with “build and fill conditions” must be deferred, including "high need" places. These places cannot be considered for funds until the build and fill condition is gone. Places with build and fill conditions must be reviewed annually and returned to the list when the build and fill condition no longer exists. Areas with “build and fill” conditions include areas where:
  - ◇ The Agency has selected another loan request for processing;
  - ◇ A previously authorized Agency, HUD, or similarly assisted housing project (including tax credit projects) has not been completed or reached its projected occupancy level;
  - ◇ An existing assisted housing project is experiencing high vacancy levels;
  - ◇ A special note rate rent or similar servicing tool is pending or in effect at another project; or

- ◇ The need in the market area is for additional rental subsidy, not for additional housing units.
- Exceptions to build and fill restrictions can be made for:
  - ◇ Group homes proposed for persons with disabilities where existing housing is insufficient for their needs or unavailable; or
  - ◇ Unusual circumstances in which there is a compelling need for additional housing. This requires National Office concurrence.

## **B. Procedures for Establishing the Designated Place List**

Each State Office will take the following steps to establish a designated place list.

- Step 1: Upon receipt of the ranked list of places from the National Office, remove all ineligible places from the list. (For example, places that no longer meet the rural area definition.)
- Step 2: Establish the number of places to be put on this list — up to 10 percent of the total eligible places on this list, but at least 10 places.
- Step 3: Remove all places with fewer than 250 eligible households from the ranked list of places.
- Step 4: Select the appropriate number of places (as established in Step 2) in rank order from the ranked list.
- Step 5: Add to the list any of the following, as appropriate:
  - ◇ Geographic diversity. If any region or district is not represented on the list, add the highest ranked place from that region or district to the list.
  - ◇ High need areas. If an area is deemed to be high need (EZ, EC, REAP, Indian reservation, other special need as documented in a comprehensive plan or similar document and concurred in by the National Office), it may be added to the list.
- Step 6: Defer any places with “build and fill” conditions.
- Step 7: Submit the list to the National Office **by October 1, or as otherwise notified by the National Office**. The list must be provided in the format shown in Attachment 3-D.
- Step 8: If the National Office does not notify the State Office of any problems, the list is considered approved after 30 days. The National Office will announce in the funding notice published in the Federal Register that the lists are available from the State Offices.

### **C. Updating the Designated Place List**

Once established, the designated place list is used for three years. However, the list must be updated annually to account for changes in local conditions.

- Step 1: Defer all places that received Agency funding for a project or that have otherwise developed build and fill conditions.
- Step 2: Remove any places that have become ineligible. (For example, areas that no longer qualify as rural areas.)
- Step 3: Reinstate any places that no longer have build and fill conditions.

Note that additional places are not routinely added to the list to replace the places taken from the list. (In some cases, for example when a state is experiencing high leveraging activity, the state may request permission to add to the list). Consequently, when the original list is developed, it should have a sufficient number of places on it to account for likely attrition over the three-year life of the list.

### **D. Partnership Designated Place List**

States with active leveraging programs and formal partnership agreements with their state agencies may establish *partnership designated place lists*. These lists consist of places identified by the partnerships as high need areas. (These high need areas must be designated based on criteria consistent with the Agency's policies and the state's authorizing statutes.) The partnership agreement and partnership designated place list must have the concurrence of the National Office.

## **SECTION 2: SITE REQUIREMENTS [7 CFR 3560.58]**

### **3.4 OVERVIEW**

Finding an appropriate site is the earliest important decision made by an applicant. Selection of the site is solely the applicant's responsibility and the Agency will evaluate the proposed site as part of a total project proposal. The Loan Originator may offer comments about the perceived adequacy of the site at the applicant's request, but the applicant holds full responsibility for the selection of an acceptable site.

This section provides guidance on site requirements including site location, site standards, site density, and civil rights.

Applicants will provide documentation in their proposals that these requirements have been met. However, a site visit is essential to evaluating the appropriateness of the site. Attachment 5-C to Chapter 5 provides a site evaluation checklist to aid the Loan Originator in their site evaluation during the site visit.

### **3.5 SITE LOCATION**

Multi-family housing properties must be located in areas that are appropriate for residential housing and represent reasonable real estate investments for the Agency. To meet this requirement, the area where the site is located must be a residential area in a designated place that provides adequate services and facilities. The requirements for an appropriate location are:

#### **A. Designated Place**

Sites must be located within the boundaries of a designated place to be considered for a loan. Loan requests must be checked against the list of designated places to make sure that all loans are made in designated places.

#### **B. Residential Area**

Multi-family housing projects must be in residential areas as part of an established rural community. The Agency defines a residential area as an area where at least half of the neighboring properties are developed with inhabited residential structures or are zoned for residential occupancy. The Loan Originator should confirm that these requirements are met during the site visit. An exception can be granted by the Agency for an existing structure in a downtown business area of a rural town as described below.

#### **C. Downtown Business Area**

A project may be located in a downtown business area only if the project is part of a comprehensive strategy for meeting a community's development and housing needs. In this event, the applicant must be able to demonstrate that the proposed project fits in the community's comprehensive strategy. In addition, the National Office must concur with

the proposal before the Loan Processing staff authorizes the applicant to submit a complete application (at Stage 2).

In the project proposal, the applicant must show that the following conditions are met:

- The local governing body has adopted through a resolution or other official act a community development and housing plan that addresses neighborhood revitalization, housing, and economic development. The project proposal must include documentation from the local governing body identifying the proposed site or structure as an essential component of the plan.
- Public and private resources will be available for completing other critical parts of the community development and housing plan.

#### **D. Public Facilities and Services**

Sites must have necessary public facilities and services to support the needs of the tenants. During the site visit, the Loan Originator must check that the following necessary facilities and services exist and that they are close and convenient to the site.

- Necessary facilities include schools, hospitals, and water and sewer systems.
- Necessary services include shopping, medical, and pharmaceutical services.
- The “close and convenient” standard may differ by area based on local transportation, population density, and type of project proposed (e.g., public transportation may be more important to elderly projects than to family property). Factors to consider include available transportation, traffic patterns, road conditions, and terrain.

#### **E. Desirable Areas**

The Agency encourages applicants to propose projects located in desirable areas where residents are more likely to find satisfactory living conditions and the value of the Agency’s investment is well protected. Sites in industrial areas or declining neighborhoods or sites that are adjacent to high-volume train tracks, grain elevators, gas stations, car lots, or other such locations that are likely to affect the value of the property or the quality of life of residents are not acceptable.

#### **F. Historic Places**

Proposed projects which have the potential to affect properties that are listed or are eligible to be listed on the National Register of Historic Places (RD Instruction 1924.106a, Construction and Repairs and 1940-G, Environmental Program) are subject to the requirements of the National Historic Preservation Act.

### 3.6 SITE STANDARDS

Planning for development must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, aesthetic and cultural values, public and private services, and housing and social conditions.

The selection and planned development of a site is the responsibility of the applicant. The Agency must review the plans for compliance with Agency site standards. The adequacy of a site is measured against two key standards:

#### Technical Assistance on Site Standards

Applicants may find technical services to help with this planning from the Soil Conservation Services and the Cooperative Extension Services.

Technical services such as architectural, engineering, land survey, or site planning must be performed by professionals who are qualified and authorized to provide such services in the state where the project is developed.

- Appropriateness for residential development. Is this site appropriate for residential development? Is it accessible? Does it have adequate infrastructure? Is it free of undesirable conditions?
- Reasonable site development costs. Can the site be developed for a reasonable cost? Does this site require minimal work to accommodate grading, drainage, and other development requirements?

Agency guidance for site planning is provided in RD Instruction 1924-C, Planning and Performing Construction and Other Development and is briefly summarized in the following paragraphs. It includes discussions of applicable codes, utilities and infrastructures, water and wastewater disposal, grading and drainage, site size and shape, and physical conditions.

#### A. Applicable Codes

All multi-family housing projects must observe every applicable Federal, State, and local codes, laws, local ordinances, and zoning requirements, and regulations on health and safety standards. Where inspections are required to meet these codes, the applicant should include written assurance of the responsible public authority stating compliance with these codes.

#### B. Adequate Utilities and Infrastructure

Sites must have infrastructure and utilities that are adequate for the needs of the site and that meet all local requirements.

- The facilities must be safe, economic, energy efficient, and dependable.
- Ideally, the utilities should be publicly owned. If the project will operate its own system, justification must be included in the application.

The applicant's proposal should address all of the items listed below, stating whether the specific utility is publicly, privately, or community-owned and providing any other relevant information.

- **Roads.** The site must be accessible by a public road. The roads must be paved or all-weather unless the Agency grants an exception.
- **Electrical service to the site.** The applicant must check with the power supplier to assure that there is adequate electrical service available to meet the needs of the proposed site. Underground services are preferred.
- **Gas service.** Gas distribution facilities, if necessary, must be installed according to local requirements. Gas service must be adequate for the needs of the site and dependable.
- **Water and wastewater disposal.** Water and wastewater disposal are discussed in the paragraph below.

### C. Water and Wastewater Disposal

The site must have water and wastewater disposal systems, whether individual, central, or privately-owned and operated, that meet the applicable water and wastewater disposal system requirements of RD Instruction 1924-C, Planning and Performing Site Development Work. There must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. A system owned or operated by a private party must have a legally irrevocable agreement that allows interested third parties to enforce the obligation.

- Central systems are preferable. When central systems are unavailable, the Agency will evaluate the proposed individual system for economic feasibility and potential impact on the environment and the project operating budget. Information on evaluation and design of individual water and wastewater systems is available from EPA. Multi-family developments of more than 25 dwelling units with individual systems must have National Office concurrence. (See RD Instruction 1924-C, Planning and Performing Site Development Work for guidance on obtaining concurrence.) Private companies usually inspect individual wells and septic system drainfields — these companies provide written results of the inspection.
- In addition, the responsible local or State regulatory agency must verify, in writing, that the privately-owned water and wastewater disposal systems comply with the Safe Drinking Water Act (42 U.S.C. 300h) and the Clean Water Act (33 U.S.C. 1341). Inspections are not required on public water and wastewater disposal systems.
- Sites that are not presently served by a central system but are scheduled for tie-in to the central system within two years should have all lines installed during the initial construction. Such sites must have an approved interim water supply or wastewater disposal system.



## **D. Grading and Drainage**

Soil and geological conditions must be suitable for the type of construction proposed. In questionable and unserved areas, the applicant must provide an engineering report with supporting data to identify all pertinent subsurface conditions that could adversely affect the structure and show proposed solutions.

- Grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and ensure that drainage from adjacent properties does not create problems on the site.
- Generally, ideal grading is four to five percent. Less grading does not allow for drainage while more slope adds costs to the development of the property. However, the Agency recognizes that ideal grading is not available in all areas. The Site Approval Official will use his or her best judgment in site approval based on other available properties and the general topography in the area.
- Sites requiring extensive earth work, cuts and fills must be designed by a professional engineer. When topography requires fills or extensive earthwork to support building structures and foundation, fill must be controlled, and all work designed, supervised and tested by a qualified soils engineer.
- All slopes must be protected from erosion by planting or other means.
- Storm water systems must be designed to consider property protection at the site and at the drainage basin level.

## **E. Size and Shape**

The size and shape of a site determines if there is enough room for the proposed units as well as walks, parking, any on-site septic system, and other site improvements. The size should be adequate to support all proposed work and, generally, sites should be close to square in shape as an elongated site may restrict the number, orientation, and layout of buildings and amenities.

## **F. Noncontiguous Sites**

In some cases, projects may involve noncontiguous sites. Note that the development of noncontiguous sites involves complexities and costs that do not exist for single sites.

- Environmental reviews may have to be performed for every site, but may be combined into a single report.
- Coordination of construction on separate sites requires extra time and labor and leads to additional costs.
- Management and maintenance of buildings on separate sites creates additional costs of operation.

## G. Undesirable Physical Conditions

Sites must not have undesirable physical conditions that create hazards or involve unnecessary development costs. Examples of such conditions include:

- Poor soil conditions that increase development costs;
- Noise from nearby roads, airports, or factories that create unacceptable residential conditions; and
- Pollution from nearby facilities or crop spraying that creates hazardous health conditions.

### 3.7 SITE DENSITY

Acceptable density standards will vary by area and local preferences. Because of these differences, program rules do not provide specific quantifiable density standards (for example, 10 units per acre). Instead, project density should be evaluated based on three factors discussed below.

- **Compatibility and consistency with the community.** Site density must be similar to the density in other developments in the community. The multi-family housing project should not look more crowded than the surrounding area nor should it look more spacious.
- **Sufficient size to accommodate necessary site features.** Each site must be large enough to support the housing units as well as adequate public space, walkways, parking, and other site amenities.
- **Impact on total development costs and project budget.** Decisions regarding the first two factors must take costs into account, i.e., how does the number of units and the cost of the site affect the per unit investment of the Agency, and can the project budget support the proposed number of units?

### 3.8 CIVIL RIGHTS [RD Instruction 2006-P, Civil Rights Impact Analysis]

It is the Agency's intent that the location of multi-family housing expand the supply of decent, safe, and sanitary housing for very low-, low-, and moderate-income elderly persons, persons with disabilities, and families in a nondiscriminatory way. The location should promote a greater choice of housing opportunities in the housing market area. Housing location should also promote equal access for all groups without regard to their race, color, sex, national origin, religion, age, disability, or marital or familial status.

In order to ensure the above objective, whenever a loan is proposed to be made, and in accordance with RD Instruction 2006-P, Civil Rights Impact Analysis, the Agency must conduct a Civil Rights Impact Analysis and document this analysis utilizing *Form RECD 2006-38*. This must be done prior to any commitment of Agency resources, including issuance of a letter of conditions, loan approval, or obligation of funds.

The civil rights impact analysis addresses two areas in particular:

- The extent to which the project serves all eligible members of the community. The Agency will examine applicant plans to market the project affirmatively and to implement nondiscriminatory occupancy policies and procedures.
- The extent to which the project location promotes equal access for all people, thereby opening up nonsegregated housing opportunities for minorities. The Agency will examine the project proposal to ensure that the project is located in an area without environmental hazards and that it does not adversely affect the health and safety of the tenants. Examples of such negative factors include locating the project near a sewage treatment facility, train tracks, or a farm that routinely engages in crop dusting. Not extending water or sewer lines to a minority or low-income area would be another example of an adverse civil rights impact.

The State Director, or official designated to certify on his or her behalf, is the certification official for analyses conducted at the State Office level. For loan approvals, this will normally be the Loan Originator. The State Civil Rights Coordinator/Manager will assist the Loan Originator on an as-needed basis and provide advice and guidance to the State Director and field staffs.

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## SECTION 3: ENVIRONMENTAL REQUIREMENTS

### *[7 CFR 1940, subpart G]*

### 3.9 OVERVIEW

The Agency considers environmental quality equally with economic, social, and other factors in its program development and decision-making processes. The environmental review process is intended to help Agency officials make decisions that are based on an understanding of the environmental consequences of a proposed action and to take those actions that protect, restore, and enhance the environment.

This section contains a general discussion of basic environmental requirements that apply to the development of multi-family projects financed by the Agency. Detailed environmental policies and procedures can be found in RD Instruction 1940-G, Environmental Program, or its successor regulation, which contains compliance requirements for the National Environmental Policy Act (NEPA), as well as other relevant laws, Executive Orders, and Departmental regulations.

### 3.10 TYPES OF ENVIRONMENTAL REVIEWS

NEPA requires that Agency actions be classified into three basic categories. This classification of actions provides the Agency with a starting point for beginning its environmental review. The three categories of actions are:

- Those that normally qualify as **categorical exclusions** and generally require the preparation of a brief checklist;
- Those that normally require an **environmental assessment (EA)**. Due to the wide range of activities funded by the Agency, it has been allowed to establish 2 categories of actions requiring an EA:
  - ◊ **Class I** actions, requiring an EA with limited detail and analysis; and
  - ◊ **Class II** actions, requiring a fully detailed EA.
- Those that normally require an **environmental impact statement (EIS)**.

Most multi-family housing activities will qualify as Class I EA or Class II EA. For a complete list of housing actions and their classifications, refer to RD Instruction 1940-G, Environmental Program. See **Attachment 3-B** for a guide to choosing an environmentally safe site.

### 3.11 COMPLETING ENVIRONMENTAL REVIEWS

The environmental review must examine a wide range of environmental issues, including the potential for impacts on protected reserves. Refer to Exhibit 3-1 for a list of the major resources to be considered.

**Exhibit 3-1****Environmentally Sensitive Land Uses and Resources**

Wetlands	Natural landmarks
Floodplains	Important Farmland
Wilderness areas	Prime Forestland
Wild and Scenic Rivers	Prime Rangeland
Historical and Archeological Sites	Coastal Zone Management Area
Critical Habitat or Endangered or Threatened Species	Sole Source Aquifer Recharge Area
Coastal Barriers	State Water Quality Standards

Through the completion of the environmental review, the Agency provides the necessary documentation to: (1) demonstrate compliance with requirements for the protection of the environment, including the development of practicable alternatives to either avoid or lessen adverse environmental impacts; and (2) demonstrate why the potential impact on the environment is not considered to be significant and, therefore, an environmental impact statement is not required.

The Agency is responsible for completing the appropriate level of environmental review in accordance with RD Instruction 1940-G, Environmental Program. This includes the assembly and analysis of relevant material, the development and analysis of practicable alternatives and mitigation measures (as appropriate), and the development of recommendations and decisions regarding environmental impacts and environmental compliance. Applicants may be requested to provide the Agency with assistance in the completion of the environmental review, including, but not limited to, data collection, preparation of forms, investigation of alternative sites and building designs or locations, issuing public notices, and development of mitigation measures to lessen adverse environmental impacts.

The Agency approval official will use the environmental review documents and the recommendations of the State Environmental Coordinator to make the Agency's final decision regarding an environmental impact determination and compliance with environmental requirements. This decision is evidenced by execution of the "Finding" on *Form 1940-22, Environmental Checklist for Categorical Exclusions*, for categorical exclusions or by execution of the Finding of No Significant Impact for environmental assessments.

State Environmental Coordinators are available to provide technical guidance and to assist in problem resolution on environmental issues. Environmental problems should be referred promptly to the State Environmental Coordinator.

### **3.12 FLOOD HAZARD DETERMINATION [7 CFR 3560.58]**

Properties located in flood or mudslide prone areas designated by FEMA must meet the provisions of the National Flood Insurance Act of 1968. This evaluation should be done early to allow a search for reasonable alternatives, if necessary.

- *FEMA Form 81-93, Standard Flood Hazard Determination*, states whether or not the property is located in a Special Flood Hazard Area (SFHA) identified by FEMA and,

if so, states the availability of flood insurance for this property through FEMA's National Flood Insurance Program (NFIP). The form may be prepared by Agency staff or by a contract service.

- Property in a SFHA is ***not eligible*** for federal financial assistance unless flood insurance is purchased through the NFIP.

The information regarding floodplains on this form will assist in the preparation of the environmental review document. It is important to understand that the availability of flood insurance through NFIP is not sufficient to allow a proposal to proceed on a floodplain site. The environmental review completed by the Agency must examine whether or not there is a reasonable alternative to a proposed purchase/construction in the floodplain.

### **3.13 MANAGEMENT OF HAZARDOUS SUBSTANCES**

The Agency must consider the management of hazardous substances, including hazardous wastes and petroleum products, from two perspectives: (1) liability under hazardous substance and hazardous waste laws; and (2) the economic risks posed by the presence of hazardous substances. Both of these issues are addressed through due diligence. Due diligence is the process of evaluating real estate, in the context of a real estate transaction for the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, and determining what effect, if any, such contamination has on the regulatory status and security value of the property.

#### **A. Due Diligence Requirements**

The Loan Originator will ensure that due diligence is performed for appropriate loan processing and servicing actions. For loan origination, due diligence shall be performed for:

- Applications for new construction under the 515 and 514/516 housing programs, and
- Applications to purchase and rehabilitate existing structures under the 515 and 514/516 housing programs, if an appraiser notifies the Agency that a potential for contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or encountered through research or interviews with individuals knowledgeable about the property.
- Applications for existing structures when the Agency becomes aware of possible contamination through some means other than the appraiser's report.

The presence and condition of underground storage tanks (USTs) shall be documented as a part of performing due diligence. If the appraiser reports a possible UST, the Loan Originator is responsible for verifying that the UST is in compliance with appropriate regulatory requirements or arrangements must be made for removal of the UST. Refer to RD Instruction 1940-G, Environmental Program or its successor regulation for further details.

To ensure that the appraisal accurately reflects a property's market value, due diligence is normally performed in conjunction with the appraisal process and the due diligence report is shared with the appraiser. The due diligence report is attached to the environmental assessment for the project.

## **B. Phase I Environmental Site Assessment**

A Phase I Environmental Site Assessment, ASTM E-1527 (Phase I ESA), must be completed by a qualified environmental professional.

If a Phase I ESA reveals contamination, the applicant must provide evidence that action has been taken to remove or control the contamination, under the direction of the appropriate regulatory agency, before the Agency will consider an application involving the site. The Agency will not knowingly accept contaminated property as security without the prior approval of the State Director, and, in case of sites listed on USEPA's CERCLA National Priority List or comparable State listing, without the prior approval of the Administrator.

## **C. Appraisers' Responsibilities**

The Loan Originator will ensure that appraisers understand their responsibility:

- To notify the Agency, when potential contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or encountered through research or interviews with individuals knowledgeable about the property;
- To notify the Agency of the existence or potential existence of regulated or unregulated USTs on the property;
- To estimate the property's "as is value," when a qualified environmental professional is employed to assist the appraiser in determining market value for real estate.

## **D. Loan Originator and Loan Servicer Responsibilities**

When visiting a property, the Loan Originator should always be alert for any indication of potential contamination from hazardous substances, hazardous wastes, or petroleum products.

For loan servicing actions which require a determination of market value, the Agency will ensure that the appropriate level of due diligence is completed in conjunction with the appraisal.

Prior to any action which may result in the acquisition of security property, the Agency shall ensure completion of a due diligence report. If there is contamination or potential for contamination, the Loan Approval Official and the State Environmental Coordinator will be consulted. The Agency may forego accepting title to contaminated property, if the cost of any necessary remedial response action and the amount of the debt



exceeds the market value of the property. If the Agency does not choose to accept conveyance or foreclose on security property, in whole or in part, because of a release of hazardous substances, hazardous wastes, or petroleum products, the State Environmental Coordinator shall notify the appropriate regulatory agency of its actions and provide a copy of the Agency's due diligence report.

Due diligence will be completed, or a previous due diligence report updated, prior to lease or disposal of inventory property. If a release or a threatened release of hazardous substances, hazardous wastes, or petroleum products is discovered on inventory property, prospective lessees or purchasers shall be informed and the State Environmental Coordinator will notify the appropriate regulatory agency.

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## **SECTION 4: DESIGN REQUIREMENTS [7 CFR 3560.59]**

### **3.14 OVERVIEW**

Design requirements apply to the features, amenities, and costs of the project. The Agency's goal is to develop quality projects at a reasonable cost.

The Agency receives information about the design from the preliminary plans and specifications, the design development drawings, and the final plans and specifications. The Loan Originator will make sure that these and other appropriate architectural documents are submitted (as listed in **Attachment 3-C**) and pass them to the Architect for review and approval. The architect reviews design for compliance with requirements described in this section.

### **3.15 STANDARDS**

Projects must meet the following design standards:

- Projects must consist of two or more units and appropriate facilities except in circumstances described below.
- Single family units may be used for group homes or for cooperative housing projects, and where 502 inventory housing is being converted to a multi-family housing project.
- Project designs must comply with the requirements of RD Instruction 1924-A, Planning and Performing Construction and Other Development. In particular,
  - ◊ Construction must be planned to conform with good construction practices as detailed in applicable State and local laws/ordinances/codes, HUD MPS Appendices C through F, and thermal requirements. (Model Energy Code 1992 edition or more stringent). (Appropriate model building code standard must be applied based on type of development.)
  - ◊ All final drawing and specs and any modifications must be certified in writing as being in conformance with the applicable development standards by the project architect. *Form RD 1924-25, Plan Certification* may be used.

### **3.16 RESIDENTIAL DESIGN**

All housing must be residential in character and must meet the needs of eligible residents. For example, family housing must include active outdoor recreation areas. Elderly housing must include elevators for buildings with more than one level that cannot be accessed without steps.

### **3.17 ECONOMICAL DEVELOPMENT COSTS**

To achieve affordable rents, multi-family housing projects must be designed with costs in mind. However, the Agency does not encourage cost containment measures that compromise the quality or longevity of the project. Poor quality designs or substandard construction are not

acceptable means of achieving economy. Projects should be designed to provide the features and amenities necessary for the lifestyles of the tenants at a cost that is economical and cost effective in the long-term. The Agency encourages the use of features that minimize maintenance costs over the life of the project.

Designs must be economical and avoid unnecessary or elaborate features. In evaluating proposed project costs, Loan Originators will use data on average costs for average quality components. They will also have to use judgment and experience to assess maintenance and operation costs and local conditions.

In general, there are two basic questions that Loan Originators must address when evaluating the cost of the proposed design:

- Is the cost reasonable?
- Is it cost effective?

#### **A. Evaluating Cost Reasonableness**

To determine if the proposed costs for a project are reasonable, Loan Originators will compare the costs shown on the project cost estimate to the known benchmark costs. These costs can be found in the data bases described in Chapter 5 including AMAS, Marshall and Swift, and Integra Claims or state-maintained database.

Proposals that exceed these costs should be evaluated for reductions. However, the Loan Originator should always take into consideration local conditions and the special conditions of the particular project. For example, high land costs or the costs of development in remote rural areas may explain why a project's costs are higher than the benchmark. Similarly, a project using funds that require Davis-Bacon wage rates may have higher costs.

#### **Minimize Processing Delays**

Costs can be reduced by eliminating unnecessary delays in application processing. Delays in processing can contribute to higher interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable time frames for processing applications are established, known, and followed, appropriate time can be planned for preparing a quality application and construction documents. Planning can result in better instructions to the builder, fewer errors, and lower construction costs.

#### **B. Evaluating Cost Effectiveness**

The Loan Originator should routinely consider the costs and benefits of the proposed design features in determining if a design is cost effective. Life cycle cost analysis prepared by the project architect and reviewed by the Agency State Architect or Engineer should be used to determine features and materials that may cost more initially but reduce operations and maintenance costs over time.

The following list presents several methods for evaluating and controlling costs:

- **Materials.** Since most materials and systems are available in a range of qualities and prices, the Architect should review construction documents for the stated cost and quality of materials used. If the specifications require qualities or grades higher than necessary, the applicant should provide justification. Projects should utilize low maintenance materials.
- **Repeat designs.** The use of repeat building designs is encouraged. Applicants whose architects have designed projects previously approved by the Agency should use these. Unique site designs for each project would be required. The use of repeat designs does not mean that “cloned” projects are required or encouraged. Designs should employ standard building material dimensions.
- **Design features.** The following features serve to lower cost:
  - ◇ Buildings should not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation off-sets, or more exterior entrances than absolutely necessary.
  - ◇ Buildings should not include roof slopes less than 3/12 nor greater than 6/12 unless otherwise required by local authorities or in order to accommodate severe weather conditions.
- **Appropriate amenities.** Project design should include amenities that are appropriate to the type of project. The following descriptions provide examples:
  - ◇ Active outdoor recreation areas are appropriate for family developments and group homes. Passive recreation areas may be sufficient in elderly and congregate housing. Elevators in two story buildings are not appropriate for family developments but are often needed in elderly and congregate developments.
  - ◇ Laundry rooms should be no larger than necessary to accommodate equipment, circulation, and areas for sorting and folding clothes.
  - ◇ The number of parking spaces should be appropriate to the type of housing and should meet local requirements.
- **Other amenities.** Designs should include features that are “reasonable and customary” in the area. For example, if local multi-family housing units include patios or balconies, or washers and dryers, these features should be included in the project. The “reasonable and customary” standard improves the marketability of the project to prospective tenants and protects the value of the Agency’s investment. Designs must avoid nonessential facilities.

- **Unit size.** Unit size should be economical. Allow for variation due to type of housing (e.g., congregate housing, townhouses) and energy conservation.
- **Energy efficiency.** The project design should include measures for energy efficiency because these features will reduce utility cost over the long term.
- **Individually metered utilities.** The unit design should accommodate individually metered gas and electric utilities. This design will allow for tenants to pay for their own utilities and will encourage lower energy use.

### 3.18 ACCESSIBILITY

Program regulations prohibit discrimination against people with disabilities [7 CFR 3560.3]. In addition, the multi-family program is subject to the three following regulations governing the accessibility of federally-assisted buildings, facilities, and programs.

- Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225): Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense. The ADA applies to areas of public accommodation in multi-family housing, such as an on-site office.
- Fair Housing Act: Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205 that implement the Fair Housing Act (42 U.S.C. 3601-19).
- Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally-assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that persons with disabilities have access to programs and activities that receive federal funds. Section 504 recipients and subrecipients include any entity that receives federal funding.

Please refer to Exhibit 3-2, Civil Rights Accessibility Requirements, for a categorization of accessibility requirements for different types of multi-family housing projects.

**Exhibit 3-2****Civil Rights Accessibility Requirements**

	<b>Section 504</b>		<b>Fair Housing Act</b>		<b>ADA</b>	
	<b>Project ready for occupancy on or before 6-10-82</b>	<b>Project ready for occupancy after 6-10-82</b>	<b>Project ready for occupancy on or before 3-13-91</b>	<b>Project ready for occupancy after 3-13-91</b>	<b>Project ready for occupancy on or before 1-26-93</b>	<b>Project ready for occupancy after 1-26-93</b>
<b>New Construction</b>		Must meet UFAS requirements		Must meet UFAS and FHA/AG requirements		Must meet UFAS, FHA/AG and ADA/AG requirements
<b>Rehabilitation</b>	<ol style="list-style-type: none"> <li>1. Encouraged to meet 5% requirement</li> <li>2. Must meet common area requirement, if feasible</li> <li>3. Must accommodate on request</li> <li>4. Must have a self-evaluation</li> <li>5. If required by self evaluation, must have a transition plan</li> </ol>	Must meet above requirements or be addressed during rehabilitation	Not applicable	Must meet above requirements or be addressed during rehabilitation	Must meet UFAS, FHA/AG and ADA/AG requirements or be addressed during rehabilitation	Must meet above requirements or be addressed during rehabilitation
<b>Equity</b>	Prior to the receipt of equity, must meet above requirements	Must meet above requirements or be addressed prior to receipt of equity	Not applicable	Not applicable (not eligible for equity at this time)	Not applicable	Not applicable (not eligible for equity at this time)
<b>A Transfer Without Rehabilitation</b>	Prior to transfer, must meet above requirements	Must meet above requirements Prior to transfer	Not applicable	Must meet above requirements prior to transfer	Not applicable	Must meet above requirements prior to transfer
<b>Ongoing Project Operations — Monitored by Supervisory Visits or Compliance Reviews</b>	Must meet above requirements	Must meet above requirements and must have a self evaluation and transition plan if found in noncompliance	Not applicable	Must meet above requirements	Not applicable	Must meet above requirements

### **3.19 RELOCATION**

#### **A. Uniform Relocation Assistance and Property Acquisition Act of 1970**

Public bodies and agencies that have the power of eminent domain and/or condemnation must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. In these cases, Agency loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons.

#### **B. Temporary relocation of tenants during rehabilitation**

A subsequent loan for the repair and rehabilitation of units may not include expenses incurred for temporary relocation of tenants.

### **3.20 CONVENTIONAL RENTS FOR COMPARABLE UNITS**

In evaluating the proposed rents for new projects, the Agency will determine the “conventional rents for comparable units” (CRCU) in the market. Sources for determining CRCU include the market data provided by the applicant in the application package, recent appraisals, current rental data from the Census Bureau, HUD, state housing agencies, or other reliable source, and the Agency's review of the market.

CRCU serves as a benchmark to maintain the affordability of program units and avoid situations where project rents are established above local conventional rents, leading to noncompetitive rents and excessive needs for RA.

The CRCU benchmark does not change the method for determining rents. Rents remain “cost-based”. This means that rents are determined based on the project budget and must be justified by the actual costs of operating the project. The CRCU benchmark simply serves as one of several underwriting tools for evaluating whether the proposed rents are reasonable and realistic, and that the project is feasible and appropriate for the area. In most cases, the Agency expects that rents will be below the CRCU standard.

Similarly, the CRCU standard does not significantly alter the Agency’s process for underwriting new projects. Loan Originators must consider a number of factors in evaluating each project application and assessing the project’s suitability and feasibility. For example, the Agency looks for evidence that there are sufficient eligible tenants to fill the units and that these tenants will be able to pay the rent. (See Chapters 5 and 6 for a discussion of the review criteria for initial and final applications.)

The CRCU standard is also used in asset management and loan servicing decisions, including loan restructuring and the calculation of prepayment incentives. See the Asset Management and Loan Servicing Handbooks for a discussion of the CRCU standard in those contexts.



In areas where market rents are exceptionally low, rents higher than the CRCU standard may be needed to operate a project that meets the Agency's decent, safe, and sanitary standards. In such circumstances, the applicant (for new projects) or the borrower (for existing projects) must document the need for an exception with local market data. The Loan Originator or Loan Servicer may grant an exception, allowing rents to exceed the CRCU standard by 10 percent. For higher rents, the State Office must obtain National Office concurrence.

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**ATTACHMENT 3-A**

**COOPERATION WITH THE DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT (HUD) AND OTHER AGENCIES**

[RD Instruction 2000-GGG]



**ATTACHMENT 3-B**  
**CHOOSING AN ENVIRONMENTALLY SAFE SITE**



## **ATTACHMENT 3-C**

### **CHECKLIST OF ARCHITECTURAL DOCUMENTS**

#### **Schematic Documents:**

- Site survey (existing conditions)
- Site plan(s)
- Building plans
- Building/wall section showing construction
- Exterior elevation(s)
- Outline specifications
- Development cost estimate
- Proposed contract (unsigned, description of documents to be used)

#### **Design Development Documents:**

- Site survey (existing conditions)
- Site location map
- Site plans including location of all buildings, sidewalks, parking and drives, accessibility, utilities, amenities, drainage plan, and other pertinent information
- Building plans including floorplan for each unit type, floorplan for each building, accessibility
- Building/wall sections showing construction (further developed)
- Exterior elevations showing materials (further developed)
- Interior elevations of kitchens and baths showing cabinetry and accessibility
- Specifications (further developed) (using Construction Specifications Institute format)
- Development cost estimate (further developed)
- Proposed contract (copy of unexecuted documents with project information)

**Working Documents:**

Site survey (existing conditions)

Site location map

Detailed site plans including dimensions to locate all buildings, sidewalks, parking and drives, accessibility, utilities, amenities (mailboxes, trash areas, laundry room, community room, etc.), drainage plan, project sign, landscaping, recreation area(s), and other pertinent information

Detailed building plans including fully dimensioned floorplan for each unit type, dimensioned floorplan for each building, accessibility, plumbing, mechanical, electrical, heating, ventilation, air conditioning, telephone, and other pertinent information

Building/wall sections showing construction

Exterior elevations showing materials

Interior elevations of kitchens and baths showing cabinetry and accessibility

Construction details for any unique interior or exterior features

Schedules for windows, doors, or other equipment/materials

Full CSI specifications

Final cost estimate

Complete contract documents ready for bid/construction



## ATTACHMENT 3-D

### SAMPLE DESIGNATED PLACE LIST FORMAT

#### DESIGNATED PLACES FOR SECTION 515 NEW CONSTRUCTION APPLICATIONS

Fiscal Year \_\_\_\_\_

State \_\_\_\_\_

*Places on this list are considered equal, with no regard to their order on the list. Inclusion on this list does not indicate that a need or demand for Section 515 housing has been established.*

Applications for Section 515 new construction loans will be accepted for the following places:

County

Place

[In addition to places selected in rank order, include and identify all high-need places that are eligible for 20 points under the loan scoring criteria: Places identified in the state (government) Consolidated Plan or similar state plan or needs assessment that have received National Office concurrence; EZ/ECs; Indian reservations or communities located within the boundaries of tribal allotted or trust land; colonias; REAP communities. Identify the high need communities by listing under a separate heading or by using an asterisk with appropriate notation.]

The following places are eligible to compete for the EZ/EC setaside:

County

Place

The following counties and colonias are eligible to compete for the Underserved Counties and Colonias Set-Aside. Eligible rural places that meet the minimum 250 household threshold and do not have any “build and fill” conditions are listed by county.

County

Place